

801.90
F.I.15

January 5, 2000

BY FACSIMILE

Michael Verbe, Esq.
Pre-Merger Notification Office
Federal Trade Commission
6th Street and Pennsylvania, NW
3rd Floor, Room 323
Washington, DC 20580

Re: HSR Issue

Dear Mr. Verbe:

This letter will confirm yesterday's telephone conversation among yourself, [REDACTED]

...), the investors plan to cause the LLC to acquire all of the stock of an acquisition company ("Company X"). An issue has arisen as to whether the LLC has a parent for purposes of the size of the parties test in determining whether the acquisition of Company X is reportable.

At one time, Investor A had proposed to acquire a majority of the equity interest in the LLC. Currently, however, Investor A proposes to acquire a minority of the equity interest,

convertible into equity should Investor A choose to convert, which it can do at any time within twelve months of closing. Because of this change in the transaction, no investor holds 50% or more of the equity of the LLC, although Investor A would own a majority of the equity if it converted its debt instrument at a future time.

We discussed the position of the pre-merger office which has been taken in connection with similar transactions. In essence, we have been previously advised that so long as the subsequent transaction (in this case, the conversion of the debt for equity) is a transaction for which the party in control of the decision (in this case Investor A) has the opportunity to make a yes or no decision based upon circumstances existing at that future time, and the decision to exercise its conversion rights or not to exercise those conversion rights is one which has

[REDACTED]

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As we discussed, it has been acknowledged in the past that business transactions such as this one are the result of joint decisions involving numerous people, and it would not be appropriate for the Section 801.90 analysis to be based on the kind of any person's

based upon the opinions/temperament of an individual, so long as the decision is consensual

Thank you again for your assistance in this matter.

Sincerely,

[REDACTED]

[REDACTED]

cc: [REDACTED]

There appears to be a business reason for structuring the deal in this manner. I see no 801.90 issue.

Michael Verne
1/5/00